

ZONING BOARD OF APPEALS MINUTES

June 11, 2013 – Regular Meeting
Delta Township Administration Building

I CALL TO ORDER

Chairman Reed called the meeting to order.

II PLEDGE OF ALLEGIANCE

Chairman Reed led the Board and others present in reciting the Pledge of Allegiance to the Flag.

III ROLL CALL

Members Present: Arking, Barnhart, Hicks, Laforet, Newman, Parr, Reed

Members Absent:

Others Present: Chris Gruba, Assistant Planner and Community Development
Director Mark Graham

IV SET AND ADJUST AGENDA

Mr. Reed asked if there were any changes to the agenda.

Mr. Gruba said there were no changes.

V OLD BUSINESS – None

VI NEW BUSINESS

Zoning Ordinance Appeal: Nicole Schuiling, owner of the property at 4513 Cranberry Court, is seeking an appeal of the Zoning Administrator's decision regarding Sections 2.2.0, 3.17.0 (A)(1) and 9.2.0 of the Zoning Ordinance.

Community Development Director Mark Graham introduced himself to the audience by noting that he also acted as the Township's Zoning Administrator. He noted that in April, the Planning Department received an inquiry from a resident from the Park Meadow subdivision about the Township's various Zoning Ordinance regulations and whether the keeping of pot belly pigs was permitted within residential zoning districts. Mr. Graham said, acting in his capacity as Zoning Administrator, the keeping of pot belly pigs was not

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permitted. Staff followed up by sending a letter to the property owner, Nicole Schuiling of 4513 Cranberry Court, who contacted staff to inform them that she did in fact have a pot belly pig. Mr. Graham noted that since that time, there had been several pieces of correspondence and Ms. Schuiling had attended a Township Board meeting to explain her situation to the Board and subsequently, Ms. Schuiling filed an appeal of the Zoning Administrator's decision to the Zoning Board of Appeals.

Mr. Graham proceeded to review his staff report to the Zoning Board of Appeals by noting that Ms. Schuiling's property was zoned RB, Low Density Residential and Section 9.2.0 of the Zoning Ordinance listed permitted uses within the RB zoning district which did not allow for the raising and keeping of livestock. He noted that the Zoning Ordinance defined "livestock" as "animals including, but not limited to, horses, cattle, sheep, goats, swine, poultry and rabbits". It was his opinion that pot belly pigs were considered swine and were not permitted in the RB zoning district and that a zoning violation existed. Mr. Graham indicated that Ms. Schuiling was informed of his ruling and made aware of Section 3.17.0 A of the Zoning Ordinance regarding the keeping of household pets which included dogs, cats, fish, birds, hamsters and other animals generally regarded as household pets that were permitted in residential zoning districts. Mr. Graham noted that his memo to the Board also recognized Section 1.3.0 A of the Zoning Ordinance which read that when there was a possible conflict between two sections of the ordinance, which he believed existed between the definition of "livestock" and the pet regulations in Section 3.17.0 A, the Zoning Administrator must apply the more restrictive provisions which he had done by determining that a potbelly pig was considered "livestock". Mr. Graham said, as permitted by Section 23.2.0A of the Zoning Ordinance, anyone could appeal his decision to the Zoning Board of Appeals. The Board had also been provided with documents submitted by the applicant, as well as correspondence from residents in favor and against the keeping of a potbelly pig.

Mr. Graham pointed out that Section 23.2.0 of the Zoning Ordinance stated that the Zoning Board of Appeals shall have the jurisdiction to decide applications for variances, appeals, and interpretations where it was alleged by the appellant that the interpretation was in error in any order, requirement, permit, interpretation, decision, or refusal made by the Building Official, Zoning Administrator or any other Township official, body, or agency in enforcing the provisions of this Ordinance. The Board of Appeals may reverse or affirm, wholly or in part, or may modify the order, requirement, permit, interpretation, decision or refusal as in its opinion ought to be done, and to that end shall have all the powers of the administrative official from whom the appeal was taken. Mr. Graham said that Ms. Schuiling had filed an appeal of his decision to the Zoning Board of Appeals. He pointed out that the Zoning Board of Appeals did not have the ability to amend the Zoning Ordinance which was under the jurisdiction of the Township Board. Mr. Graham indicated that, as per Section 23.2.0 of the Ordinance, the Zoning Board of Appeals could affirm or reverse his decision regarding the pot belly pig.

Ms. Laforet questioned if there had been similar interpretations made in the past regarding

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the keeping of household pets.

Mr. Graham noted that there had not been any interpretations that he could remember, but staff had received numerous calls regarding household pets and had received complaints. He noted that there was an instance where a resident had a pot belly pig on Mt. Hope Highway within the industrial tract approximately five years ago.

Mr. Hicks said while the Zoning Board of Appeals had not received any appeals of Mr. Graham's interpretation of the ordinance, there had been other inquiries regarding the keeping of pets in terms of what could and could not be kept.

Mr. Graham noted that the Township had been involved in litigation regarding a resident on Willow Highway who kept chickens and claimed that one of the chickens was her son's pet. Ultimately, the resident moved out of the Township.

Mr. Arking said due to the fact that the Zoning Ordinance didn't differentiate between one species and the other and if the Zoning Board of Appeals approved the keeping of the pot belly pig this evening, he questioned what tools staff would have to keep someone from having a 450 pound razorback hog as a pet.

Mr. Graham said if the Zoning Board of Appeals reversed his decision this evening to allow the keeping of a pot belly pig, he would recommend to the Township Board that the Zoning Ordinance's definition of "livestock" be amended. He noted that the ordinance could also be amended to specify issues such as weight and the number of animals that could be kept. He reminded the Board that only the Township Board had the authority to amend the Zoning Ordinance.

Ms. Parr felt Delta's Zoning Ordinance categorized "livestock" as being animals raised for food or profit and that she was in favor of how the City of Midland handled pot belly pigs by creating a section in their Zoning Ordinance that regulated pot belly pigs similar to how dogs were regulated.

Mr. Reed asked if there was anyone in the audience who would like to speak on this matter.

Nicole Schuiling, 4513 Cranberry Ct., said she was the applicant who had appealed the decision by the Zoning Administrator. Ms. Schuiling said that she had submitted several documents to the Board that was valuable information about pot belly pigs. Ms. Schuiling felt the few people that had a problem with her pot belly pig were people who didn't know anything about this animal. She noted that her pot belly pig was not a farm animal and that he was bred at a breeders home to be a pet and that she didn't know of any farms that had pot belly pigs that were raised for food and that they were always bred to be pets. Ms. Schuiling noted that there were thousands of people all over America that had pot belly pigs for pets and she hoped that the Board reviewed everything that she had submitted and that their

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decision came from facts and truths. She hoped that after the Board read everything that she had submitted and done research on this matter, that they would see that pot belly pigs were not livestock and that they were not raised for food or fiber, but rather their sole purpose in life was for companionship.

Mr. Newman said he appreciated Ms. Schuiling attending this evening's meeting and submitting the information. Mr. Newman questioned where someone could purchase a pot belly pig.

Ms. Schuiling said you can purchase pot belly pigs from a breeder. She noted that Michigan had the most breeders of pot belly pigs in the country. Ms. Schuiling said she adopted her pet from a woman who ran an ad on "Local Pet Finder" who couldn't take care of him anymore.

Mr. Barnhart asked Ms. Schuiling if she was aware of the letters submitted by her neighbors.

Ms. Schuiling said she had read the letters submitted to staff from her two neighbors which she had responded to. She indicated that her pet did get out of their yard and go into her neighbor's garage at one time, but since that time, their gate has been fixed and it has never happened again. She said the claim that her pet was always running around the neighborhood was false. Ms. Schuiling noted that her neighbor has called animal control three times and all three times, animal control has come to her house and her pet has been inside and that there had never been any evidence that he had been out. She noted that the animal control officer informed her that the next time her neighbor called, he would require a picture showing that the animal was in fact off premise. Ms. Schuiling informed the Board that her neighbor's dog had got out and been on her property.

Mr. Hicks said he wanted to make sure the Zoning Board of Appeals stayed on task. He indicated that tonight the Board was acting in the capacity of a non-original jurisdiction.

MOTION BY HICKS, SECONDED BY ARKING, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 7-0.

Ms. Laforet noted that the Board was limited in what they could do this evening however, she would like to propose that because the applicant's pot belly pig was kept as a pet and the fact that pot belly pigs were not considered livestock, she would like to consider allowing the applicant's pot belly pig and asking the Township Board to amend the definition of household pets in the Zoning Ordinance to include pot belly pigs.

Mr. Hicks informed the Board that Section 1.3.0 A of the Zoning Ordinance stated that when there was one portion of the ordinance that was more restrictive than another, the more restrictive provision was applied. He said in this instance, when the Zoning Ordinance was approved, swine was included in the definition of livestock. He said where he was torn was

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the fact that given the ordinance as it read, Mr. Graham made an interpretation that a pig was considered swine regardless of whether it was a pet kept in the house or processed for meat. Mr. Hicks didn't feel the Board could consider the pet portion of the Zoning Ordinance because they had a more specific direction that was already provided in the ordinance which stated that where there was a more restrictive interpretation, that is what the Board had to use. He felt the Board would not only have to ignore a pot belly pig as swine, but the Board would have to ignore Section 1.3.0 A which stated that the Zoning Administrator was to apply the more restrictive requirement. Mr. Hicks said at some point in time, the Township Board adopted the ordinance which specifically included swine in the definition of livestock, but that was not to say it couldn't be changed in the future and that the Township Board may consider amending the ordinance, but until the ordinance was amended, he wasn't sure how this Board could ignore the two aforementioned provisions contained in the Zoning Ordinance. Mr. Hicks said he appreciated how forthright the applicant had been and her honesty, but the Board's charge this evening was very specific in regards to appeals as opposed to an original action. Mr. Hicks said that was how he felt in relationship to the argument surrounding exempting pot belly pigs from the definition of livestock.

Ms. Laforet said she was of the understanding that the Zoning Board of Appeals could make a recommendation that the applicant wouldn't be required to get rid of her pot belly pig until the Township Board decided whether or not to amend the Zoning Ordinance.

Mr. Hicks felt the Board had to render a decision this evening as to whether Mr. Graham was correct or incorrect in his interpretation. He said as it stood right now, the Zoning Administrator's decision stands and even if the Board didn't make a decision this evening, Mr. Graham, as Township Zoning Administrator, was to continue enforcing the Zoning Ordinance as he had interpreted it.

Mr. Graham said that was correct, but he noted that there was a provision in the Zoning Ordinance that stated that anyone who filed an appeal would have any enforcement action held in abeyance while the appeal was pending.

Mr. Hicks felt Ms. Laforet had indicated that she would like to make an interpretation to allow the applicant to keep her pot belly pig and also make a recommendation to the Township Board to amend the Zoning Ordinance.

Ms. Laforet said she would also like to make a recommendation to the Township Board that pot belly pigs be considered as household pets and be required to go through the same licensing procedures as other household pets were required to do.

Mr. Hicks said he based his response on Ms. Laforet's interpretation that swine not be included in the definition of livestock.

Ms. Laforet said there were many definitions of "swine", but she felt there should be some

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type of definition, or exemption, in the Zoning Ordinance when something was specifically bred for a household pet. Ms. Laforet felt the Zoning Board of Appeals Board was allowed to make a determination that the applicant be permitted to keep her pot belly pig, as well as make a recommendation to the Township Board that they consider amending the ordinance. She said if the Board decided not to amend the Zoning Ordinance, then the applicant would be required to get rid of her pet.

Mr. Hicks said if the Zoning Board of Appeals made a determination that pot belly pigs were not included in the definition of "swine" that interpretation was binding from this day forward until the Township Board decided to amend the ordinance. He said the question before the Board this evening was not whether the applicant could keep her pot belly pig or not, but rather the question before the Board was whether a pot belly pig should be considered swine or was there some reason why the household pet portion of the ordinance should prevail. It was not whether the applicant could keep her pet or not.

Mr. Arking felt the applicant had done an admirable job putting together a packet of information demonstrating why pot belly pigs were different than other pigs and how other communities had treated this issue. However, he said none of that was relevant to the legal question before the Board this evening. Mr. Arking believed that Mr. Graham made the only correct interpretation of the Zoning Ordinance available to him and that was that swine was considered livestock. He said if he was forced to vote on this matter tonight, he would have to vote to deny the appeal. However, he would be open to tabling the issue long enough to see if the Township Board wanted to consider an amendment to the ordinance that would accommodate these very special kinds of animals. He felt the interpretation could be tabled this evening until the Township Board made a decision as to whether or not to amend the ordinance.

Mr. Hicks reminded the Zoning Board of Appeals that the Township Board may or may not do anything and if the Township Board elected to not proceed with this matter, he questioned whether it changed anything before the Zoning Board of Appeals. He agreed that there was but one conclusion when it came to the interpretation of the ordinance. If the word "swine" was not contained in the ordinance, it would be different, but the ordinance specifically includes swine in the definition of "livestock".

Discussion ensued between Board members regarding the tabling of this matter until the Township Board made a decision whether or not to amend the ordinance.

Mr. Graham said when the applicant went before the Township Board in May, he had to remind the Board that they did not have the authority to make an interpretation, but there was the inclination that two members were in favor of addressing this issue and looking into it further.

Ms. Parr noted that if the Zoning Board of Appeals made a recommendation to the Township

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Board to amend the ordinance regarding pets that they might be more inclined to act.

Mr. Newman felt the definition of “household” pets was rather broad in that it included the term “other animals generally regarded as household pets”. He felt the ordinance prohibited rabbits as household pets, but there were several people who had rabbits as pets. He questioned whether rabbits fit under “household” pets because if a pot belly pig was generally regarded as a household pet, couldn’t there be some interpretation to that.

Mr. Graham felt there could always be some interpretation in how the ordinance was administered. He said he was going to conservatively interpret the ordinance and that he wasn’t going to make an interpretation that rabbits were generally used for pets. Mr. Graham said he was looking for clarification and he agreed that a permanent solution was an amendment to the Zoning Ordinance which only the Township Board had the authority to do.

Ms. Laforet questioned if the definition of “household pet” was to be considered an animal kept for pleasure inside a home which was a different than livestock. Ms. Laforet said her interpretation right now of what a household pet was, the applicant’s pot belly pig fell under the definition of “household” pet. However, with the understanding that pot belly pigs fell under the definition of “swine”, this matter was something that needed to go to the Township Board. She said in this case, a specific breed of pig was only used for household pets and she questioned whether the Zoning Board of Appeals could disagree with Mr. Graham’s interpretation due to the fact that by all definitions, pot belly pigs were considered household pets, but due to the existing language in the ordinance, the ordinance needed to be amended.

Mr. Reed felt the issue before the Board this evening was very specific and that with the definition of “swine” contained in the Zoning Ordinance, the Board had to determine whether to agree with Mr. Graham’s interpretation and apply the more restrictive language in the ordinance. He liked the idea of tabling the issue with the possibility of sending a recommendation to the Township Board that they look at this matter to see if they would consider an ordinance amendment, but he didn’t believe that the Zoning Board of Appeals could do that. He felt the Board’s responsibility this evening was to determine whether Mr. Graham’s interpretation was right or wrong. Mr. Reed felt Mr. Graham’s interpretation was correct, but he noted there was a possibility that the Township Board could amend the ordinance if this case was tabled which would give the Zoning Board of Appeals the opportunity to have the issue resolved in the proper format.

Mr. Arking noted that due to the fact that Mr. Graham had to take the more restrictive definition and because the ordinance’s definition of livestock referred to “swine”, he didn’t see how this matter could be resolved without amending the ordinance which could only be done by the Township Board.

Ms. Parr spoke of how other communities had regulated pets and that Delta should consider these other ordinances.

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Mr. Hicks said that he didn't want to give Ms. Schuiling a false sense of hope that a tabling of the appeal by the Zoning Board of Appeals would provide her with the decision she was seeking.

MOTION BY ARKING, SECONDED BY PARR, THAT THE ZONING BOARD OF APPEALS TABLE NICOLE SCHUILING'S APPEAL OF THE ZONING ADMINISTRATOR'S DECISION UNTIL THE ZONING BOARD OF APPEALS OCTOBER MEETING OR UNTIL INFORMATION IS RECEIVED FROM THE TOWNSHIP BOARD PRIOR TO THAT AND THAT THE ZONING BOARD OF APPEALS RECOMMENDS TO THE TOWNSHIP BOARD THAT THE ZONING ORDINANCE TEXT REGARDING "LIVESTOCK" BE ADDRESSED WITH THE ZONING BOARD OF APPEALS' SPECIFIC CONCERNS NOTED AND ALSO THAT THE CITY OF MIDLAND'S REGULATIONS SERVE AS A GUIDELINE AS TO HOW TO PROCEED ON THIS MATTER. FURTHER, THAT TONIGHT'S MINUTES, TOGETHER WITH CORRESPONDING MATERIALS, BE FORWARDED TO THE TOWNSHIP BOARD. VOICE VOTE. CARRIED 7-0.

- VIII. OTHER BUSINESS - None
- IV STAFF COMMENTS - None
- X BOARD COMMENTS
- XI ADJOURNMENT

Chairman Reed adjourned the meeting at 7:04 p.m.

DELTA CHARTER TOWNSHIP
Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink